

RADIATION PROTECTION

254.31

254.31 Definitions.

254.31(1)

(1) "By-product material" means any of the following:

254.31(1)(a)

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

254.31(1)(b)

(b) The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

254.31(2)

(2) "Decommissioning" means conducting final operational activities at a nuclear facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities necessary to prepare the site for postoperational care.

254.31(2m)

(2m) "General license" means a license, under requirements prescribed by the department by rule, to possess, use, transfer or acquire by-product material or devices or equipment utilizing by-product material without the filing of a license application by a person or issuance of licensing confirmation by the department.

254.31(3g)

(3g) "Ionizing radiation" means all radiations capable of producing ions directly or indirectly in their passage through matter, including all of the following:

254.31(3g)(a)

(a) Electromagnetic radiations, including X-rays and gamma rays.

254.31(3g)(b)

(b) Particulate radiations, including electrons, beta particles, protons, neutrons, alpha particles and other nuclear particles.

254.31(3p)

(3p) "Nonionizing radiation" means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

254.31(4)

(4) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.

254.31(4p)

(4p) "Radiation" means both ionizing and nonionizing radiation.

254.31(5)

(5) "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. "Radiation generating equipment" does not include a device that emits nonionizing radiation.

254.31(6)

(6) "Radiation installation" is any location or facility where radiation generating equipment is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

254.31(9)

(9) "Radiation source" means radiation generating equipment or radioactive material.

254.31(9m)

(9m) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator-produced material, by-product material, naturally occurring material, source material and special nuclear material.

254.31(10)

(10) "Source material" means any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof.

254.31(11)

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

254.31(11g)

(11g) "Specific license" means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

254.31(11m)

(11m) "Transuranic" means a radioactive material having an atomic number that is greater than 92.

254.31(12)

(12) "X-ray tube" means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X-ray energy.

254.31 - ANNOT.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9.

254.33

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

254.33 - ANNOT.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

254.335

254.335 Agreements with the U.S. nuclear regulatory commission transition.

254.335(1)

(1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by-product material, source material and special nuclear material and to assume state regulatory authority.

254.335(2)

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

254.335 - ANNOT.

History: 1999 a. 9.

254.34

254.34 Powers and duties.

254.34(1)

(1) The department is the state radiation control agency and shall do all of the following:

254.34(1)(a)

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material may be no less stringent than the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

254.34(1)(am)

(am) A rule identical to a rule specified under par. (a) may be promulgated by a state agency other than the department and an ordinance identical to a rule specified under par. (a) may be enacted by a local governmental unit, but no rule may be promulgated or ordinance may be enacted that differs from a rule under par. (a) and relates to the same subject area except as provided under ss. 166.03 (2) (b) 6., 293.15 (8) and 293.25.

254.34(1)(b)

(b) Administer this subchapter and the rules promulgated under this subchapter.

254.34(1)(c)

(c) Develop comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation that are compatible with requirements of the U.S. nuclear regulatory commission for the regulation of by-product material, source material and special nuclear material. The department shall maintain all of the following records:

254.34(1)(c)1.

1. Files of all license applications, issuances, denials, transfers, renewals, modifications, suspensions and revocations under s. 254.365.

254.34(1)(c)2.

2. Files of all registrants under s. 254.35 and any related administrative or judicial action.

254.34(1)(d)

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

254.34(1)(e)

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

254.34(1)(f)

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

254.34(1)(g)

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

254.34(1)(h)

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

254.34(1)(h)1.

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

254.34(1)(h)2.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

254.34(1)(h)3.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

254.34(1)(h)4.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

254.34(1)(h)5.

5. Develop standards of performance for the regional radon centers and, from the appropriation under s. 20.435 (5) (ed), allocate funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

254.34(2)

(2) The department may:

254.34(2)(a)

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

254.34(2)(b)

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

254.34 - ANNOT.

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475.

254.345

254.345 Assessment of Fee.

254.345(1)

(1) The department may annually assess a fee of 36% of the U.S. nuclear regulatory commission license application fee and materials license annual fee, for any licensee of the U.S. nuclear regulatory commission in this state. The fee amounts shall be used by the department for the department's activities under this subchapter. The department may revise the fee amounts by rule.

254.345(2)

(2) This section does not apply after December 31, 2002.

254.345 - ANNOT.

History: 1999 a. 9.

254.35

254.35 Registration of ionizing radiation installations.

254.35(1)

(1) Application. For every site in this state that has an ionizing radiation installation that is not exempted by this section or the rules of the department, the person in control of the installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency, shall, prior to operation, register the ionizing radiation installation with the department. No ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone does not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but serves merely to inform the department of the location and character of radiation sources. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources are not required to list such sources on the registration form.

254.35(2)

(2) Amended registration. If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis. The department shall record the change in the registration. No registration is transferable from one premises to another or from one person to another. If the person in control intends to transfer control of ownership of the radiation installation to another person, at least 15 days before the final transfer the registrant shall notify the department of the transfer and the intended transferee shall file under sub. (1) an application for registration. If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

254.35(3)

(3) Registration fees.

254.35(3)(a)

(a) An annual registration fee under pars. (b) to (fm) shall be levied for each site registration under this section. An additional penalty fee of \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

254.35(3)(b)

(b) For a site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, chiropractors or hospitals that possesses radioactive materials in any quantity, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

254.35(3)(c)

(c) For a podiatric or veterinary site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

254.35(3)(d)

(d) For a dental site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$30 for each X-ray tube.

254.35(3)(f)

(f) For an industrial, school, research project or other site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

254.35(3)(fm)

(fm) For any site that has generally licensed devices that are not exempted by the department, the fee shall be at least \$100 for each site and at least \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi of a transuranic.

254.35(3)(g)

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee for a site having an ionizing radiation installation, for an X-ray tube or for generally licensed devices that are not exempted by the department.

254.35(4)

(4) Exemptions. After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard.

254.35 - ANNOT.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5); 1999 a. 9.

254.365

254.365 Licensing of radioactive material.

254.365(1)

(1) License required. No person may possess, use, manufacture, transport, store, transfer or dispose of radioactive material or a device or item of equipment that uses radioactive material or may operate a site that uses radioactive material that is not under the authority of the U.S. nuclear regulatory commission unless one of the following applies:

254.365(1)(a)

(a) The person has a specific license issued by the department.

254.365(1)(b)

(b) The person meets general license requirements.

254.365(1)(c)

(c) The person possesses a license issued by another state or by the U.S. nuclear regulatory commission that is reciprocally recognized by the department.

254.365(1)(d)

(d) The person is exempted from licensure under sub. (7).

254.365(2)

(2) Application. Application for a license under sub. (1) (a) or for reciprocal recognition under sub. (1) (c) shall be made on forms provided by the department.

254.365(3)

(3) Modification or termination of license. Within 30 days after any change to the information on a license issued under this section, the licensee shall inform the department of the change and the department shall record the changed information. Within 30 days after termination of an activity licensed under this section, the person in control of the activity shall notify the department. The department may require that the person in control submit to the department for approval a plan for decommissioning the activity.

254.365(4)

(4) Rules. The department shall promulgate rules for all of the following:

254.365(4)(a)

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

254.365(4)(b)

(b) The requirements for a general license under sub. (1) (b).

254.365(5)

(5) Fees and charges.

254.365(5)(a)

(a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:

254.365(5)(a)1.

1. Issuance of an initial or renewal specific license under sub. (1) (a).

254.365(5)(a)2.

2. Annual license maintenance.

254.365(5)(a)3.

3. Issuance of a license amendment.

254.365(5)(a)4.

4. Termination of a license.

254.365(5)(a)5.

5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

254.365(5)(b)

(b) The department may assess a late payment charge of 25% of the specific license renewal fee, in addition to the fee under par. (a) for renewal of a specific license, if payment for renewal of a specific license is not made within 30 days after the license expiration date.

254.365(6)

(6) Denial, suspension or revocation of licensure. The department may, after a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for failure by the licensee to comply with this subchapter, rules promulgated by the department under this subchapter or any condition of the license.

254.365(7)

(7) Exemption. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard.

254.365 - ANNOT.

NOTE: This section is created eff. 01-01-03 by 1999 Wis. Act 9.

254.365 - ANNOT.

History: 1999 a. 9.

254.37

254.37 Enforcement.

254.37(1)

(1) Notification of violation and order of abatement. Whenever the department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, the department shall do all of the following:

254.37(1)(a)

(a) Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

254.37(1)(b)

(b) Order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

254.37(2)

(2) Orders. The department shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department finds that a condition exists that constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

254.37(3)

(3) Rules. The department shall promulgate and enforce the rules pertaining to ionizing radiation.

254.37(4)

(4) Jurisdiction. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctive and other appropriate relief.

254.37 - ANNOT.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27; 1999 a. 9.

254.38

254.38 Emergency authority.

254.38(1)

(1) Impounding materials. The department may impound or order the sequestration of sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department.

254.38(2)

(2) Emergency orders. If the department finds that an emergency exists concerning a matter subject to regulation under this subchapter that requires immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing that recites the existence of the emergency and requires such action as is necessary to mitigate the emergency. Any person to whom the order is issued shall immediately comply with the order. A person to whom an emergency order is issued shall be afforded a hearing within 30 days after receipt by the department of a written request for the hearing. An emergency order is effective upon issuance and remains in effect for up to 90 days after issuance, except that the order may be revoked or modified based on the results of the hearing.

254.38 - ANNOT.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5); 1999 a. 9.

254.39

254.39 Exceptions.

254.39(1)

(1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

254.39(2)

(2) This subchapter does not apply to on-site activities of any nuclear reactor plant licensed by the U.S. nuclear regulatory commission.

254.39 - ANNOT.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39; 1999 a. 9.

254.41

254.41 Radiation monitoring of nuclear power plants. The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of \$30,000 per plant, commencing in fiscal year 1983-84, to finance radiation monitoring under this section. The department may change this annual fee by rule.

254.41 - ANNOT.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.

254.45

254.45 Penalties.

254.45(1)

(1) General.

254.45(1)(a)

(a) Any person who violates this subchapter or a rule promulgated under this subchapter or a condition of a license or registration issued by the department under this subchapter may be required to forfeit not less than \$100 nor more than \$100,000. Each day of continued violation constitutes a separate offense.

254.45(1)(b)

(b) The amount of the forfeiture assessed under par. (a) shall be determined by considering all of the following:

254.45(1)(b)1.

1. The wilfulness of the violation.

254.45(1)(b)2.

2. The person's previous violations, if any, of this subchapter, rules promulgated under this subchapter or conditions of a license or registration issued by the department under this subchapter.

254.45(1)(b)3.

3. The potential danger or actual or potential injury to the environment or to public health caused by the violation.

254.45(1)(b)4.

4. The actual or potential costs of the damage or injury caused by the violation.

254.45(2)

(2) Assessment of forfeitures; notice. The department may directly assess forfeitures provided for in sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the person. The notice shall specify the amount of the forfeiture assessed and the violation and the statute or rule alleged to have been violated and shall inform the person of the right to hearing under sub. (3).

254.45(3)

(3) Hearing. A person upon whom a forfeiture is imposed may contest the action by sending, within 10 days after receipt of notice of a contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

254.45(4)

(4) Forfeiture payment and disposition.

254.45(4)(a)

(a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days after receipt of the notice under sub. (2) or, if the person contests the assessment, within 10 days after receipt of the final decision after exhaustion of administrative review. If the person petitions for judicial review under ch. 227, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

254.45(4)(b)

(b) The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

254.45(5)

(5) Enforcement. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid as required under sub. (4). The only issue to be contested in an action under this subsection is whether the forfeiture has been paid.

254.45 - ANNOT.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5); 1999 a. 9.